

Committee on Resources

Subcommittee on Water & Power

Witness Statement

Introduction

Good afternoon Mr. Chairman and members of the Subcommittee. My name is Bart Miller. I am an attorney with the Land and Water Fund of the Rockies, a non-profit organization in Colorado representing grassroots environmental groups in 8 western states. I appear today on behalf of the Land and Water Fund of the Rockies, the Sierra Club, and Trout Unlimited, groups whose missions include protecting water resources, fish habitat, and the environment.

We believe it is premature to consider H.R. 4389, a bill which would require the Secretary of the Interior to transfer four water distribution facilities from the Bureau of Reclamation to the Northern Colorado Water Conservancy District. This body should defer consideration of the proposed transfer until the public process already set in motion by the Bureau has run its natural course. We strongly agree with a statement made last summer by Commissioner Martinez that agreement should be reached by stakeholders at the local level before being brought before Congress for your consideration and ratification.

Summary

There are three essential reasons why H.R. 4389 is premature.

First, the bill fails to enhance the aquatic environment of the Poudre River basin. The four facilities proposed for transfer, and the larger Colorado-Big Thompson Project of which they are a part, brought huge economic benefit to Colorado's Front Range. However, increasing human demand for water in the region places an intensifying strain on the environment, especially upon fish and other aquatic species in the Poudre River system. In the past few decades, the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), and the Bureau's evolving role as a manager of rivers throughout the West, have helped stem the tide of environmental degradation.

However, if the proposed transfer takes place, almost all of the public protection and control offered by ESA, NEPA, and the Bureau will be gone forever. The effect of this loss can be offset somewhat if the District agrees to take certain actions to enhance the Poudre River environment as part of a negotiated transfer. Last summer, Commissioner Martinez strongly supported the goal that "transfers should include environmental enhancements as part of the transfer." *See July 28, 1999, letter from Eluid Martinez to Bruce Driver, Executive Director of the Land and Water Fund.*

The proposed transfer would confer a substantial benefit on the District. Some of this benefit the District should be willing to return in the form of environmental enhancement, public accountability, and similar measures. Environmental protections should be negotiated and agreed upon in advance by the interested stakeholders before Congress weighs whether to ratify the transfer.

Second, this subcommittee should consider this bill only after full public involvement. The language of the

bill, as currently drafted, mandates that the Secretary transfer these Colorado-Big Thompson Project facilities "as soon as practicable." This language presupposes a decision, not yet made by the Bureau, that it is in the public interest to transfer these facilities out of public ownership. The bill ties the Bureau's hands and appears to dictate an outcome.

Firm commitments made by the Bureau and the District for full public involvement have not yet been realized. The Bureau, in particular, has specific agency guidance dictating that specifics related to the transfer of public facilities should be spelled out prior to legislative action.

Public involvement is already underway and should be allowed to run its course before the federal legislature acts. Last fall, the Bureau initiated NEPA scoping on the proposed transfer. The Bureau's Environmental Assessment (EA), due sometime this summer, will allow critical public involvement and enable the Bureau to reach the next phase of the NEPA process.

As written, H.R. 4389 would mandate the transfer of the facilities and short-circuit the public process already begun. Because all stakeholders have a role in determining whether a transfer should go forward and, if so, under what conditions, this bill is premature. There is no need for haste. The facilities have been in federal ownership for nearly 50 years. If transfer happens, it should be done right, with full public input.

Third, the bill must protect the taxpayers' financial interest. The District is close to completing its interest-free repayments on the Colorado-Big Thompson Project (C-BT). However, the District's repayment obligation amounts to only 14% of the total cost of C-BT borne by federal taxpayers.

Under reclamation laws, water users are in no sense entitled to project ownership when they complete their capital repayment obligation. Instead, transfer of the facilities is a new benefit, and should be negotiated anew. Because of the huge benefit that would be received by the District through transfer, the negotiated transfer should include compensation to the taxpayer in the form of environmental enhancement, public accountability, and other measures. As currently written, H.R. 4389 lacks any such provisions, and thus should not go forward.

The Poudre River and the Facilities Proposed for Transfer

The Poudre River

The Poudre watershed is a highly valuable public asset to all Coloradans. The Poudre River and its tributaries drain most of Larimer County in north-central Colorado before joining the South Platte east of Greeley. In 1986, the Poudre was designated as Colorado's first and only Wild & Scenic River. Throughout its length, the Poudre supports many vibrant plant and animal communities in one of the most pristine basins on Colorado's front range. It is renowned by everyone from anglers to kayakers for its instream flows. In 1985, the Colorado Water Conservation Board established instream flow rights for four reaches of the river.

The Poudre supports native fish species including the white sucker, cheek chub, and longnose dace, as well as introduced species like rainbow and brown trout. Several other species, like the common shiner and brassy minnow, were present in the Poudre historically but have been locally extirpated from the river by human activity. Many fish species, like the common shiner and northern red-bellied dace, struggle for survival downstream, in the South Platte River. These species are prevented from potential re-colonization of the Poudre due to human obstructions and alterations in the timing and quantity of flows from those

occurring in the Poudre's natural hydrograph. In addition, native insect and aquatic macroinvertebrate communities, critical food sources for fish and bird species, have been highly impacted by the alteration of flows, diversion facilities, and other development along the Poudre.

Water native to the Poudre basin and imported from the western slope provides for irrigation and the growing municipal needs of Fort Collins, Greeley, Loveland, and other cities in northern Colorado. Municipal and industrial uses of water in the District are anticipated to grow by as much as 250% in the next 25 years (from 166,000 acre-feet/year to 460,000 acre-feet/year). The facilities proposed for transfer will supply a significant portion of the water used for continued urban sprawl. This extensive future development will put a strain on aquatic species that persist in the Poudre and South Platte rivers.

The District and the Colorado-Big Thompson Project

The District has promoted and guided water development in the Poudre and South Platte basin for most of the 20th Century. Many influential Coloradans who would later help form the District, pushed for congressional authorization of the C-BT to supplement the native water supply of Colorado's front range with water from the headwaters of the Colorado river. Today, the District apportions water for irrigation through over 120 ditches and 60 reservoirs and provides supplemental municipal and industrial water for eleven communities.

The C-BT and the District's management of the native and imported waters of northern Colorado have greatly altered the natural hydrograph of the Poudre and South Platte. Human influence on the river has acted to moderate flows, making naturally high flows lower and periods of naturally low flows higher. Human-made obstructions also slow or prevent fish passage in the rivers and water diversion structures often suck young fish into tunnels, canals, and ditches.

The Facilities Proposed for Transfer

The four facilities of the CBT proposed for transfer are water delivery canals located west and northwest of Fort Collins. To varying degrees, they all affect the hydrology and aquatic environment of the region and could potentially deliver water to slake the thirst of future municipal growth in local communities.

The Hansen Supply Canal, delivering water from the north end of Horsetooth Reservoir in a mostly concrete-lined canal, has a peak capacity of 1500 cubic feet per second (cfs) and operates during the irrigation season (spring-summer). Most of the water in the Hansen Supply Canal is delivered to the mainstem Poudre for use by irrigators diverting water from the Poudre further downstream. The Windsor Extension takes some water from the end of the Hansen Supply Canal and siphons it under the Poudre to a canal on the north side of the river.

The North Poudre Supply Canal and Diversion works has a capacity of 250 cfs and diverts water during the irrigation season through several tunnels and earthen ditches to irrigate land north of the mainstem Poudre. When in operation, this facility depletes the mainstem Poudre for approximately 4 miles until replacement water is delivered at the outlet of the Hansen Supply Canal.

The fourth facility proposed for transfer is the Dixon Feeder Canal. This earthen canal has a 8 cfs capacity and delivers water from the east side of Horsetooth Reservoir south to Dixon Reservoir, located inside City of Fort Collins open space.

The recently proposed Pleasant Valley Pipeline could make substantial additional depletions from the mainstem Poudre through the diversion works of the North Poudre Supply Canal in the spring and summer months. The Bureau is currently considering the inter-related nature of the Pleasant Valley Pipeline and the facilities proposed for transfer today.

Collectively, these facilities carry a tremendous amount of water and can alter the timing and quantity of flows in the Poudre River.

Critical Issues to be Resolved Before Enactment

Consideration of H.R. 4389 is premature. The legislature should wait to consider the proposed transfer until the District, the Bureau, and interested members of the public have fashioned an agreement for a transfer that makes sense and gives adequate coverage to the multiplicity of interests at stake.

In addition to the NEPA process currently underway, a full negotiation prior to legislative action is becoming the model to follow. Current negotiations related to the proposed transfer of facilities on the Henry's Fork River in Idaho have made progress when irrigators, ranchers, environmentalists, and others sat down to reconcile their individual interests in the federally-owned facilities. The ultimate goal, as articulated by the Bureau in several documents, is to approach the legislature after the parties reach agreement on the transfer at the local level. In the long run, this path saves the legislature and all interested parties time and inconvenience.

We must oppose this bill until there has been adequate opportunity to address, at a bare minimum, the following issues:

1. Ensuring Environmental Enhancement

As drafted, the bill lacks any measures for environmental enhancement. Requiring environmental enhancement in exchange for the District's ownership of the four facilities at issue is both necessary and fair. Enhancement is the appropriate *quid pro quo* for the fact that, post-transfer, ESA, NEPA, and Bureau control of the facilities will be lost forever and that the District will gain ownership of the facilities at just a fraction of their actual cost to the taxpayer.

Last summer, the Bureau, through Commissioner Martinez, strongly supported the goal that "transfers should include environmental enhancements as part of the transfer." *See July 28, 1999, letter from Eluid Martinez to Bruce Driver, Executive Director of the Land and Water Fund.* In the same letter, the Commissioner expressed his desire that "local community and representatives of conservation groups [play] an active role to find a creative means to make [a] transfer result in improved management for the environment." We applaud the new role the Bureau has aspired to under this leadership. However, these aspirations must be borne out by actual results on the ground.

There are several ways the proposed transfer could improve the environment (this list is by no means all-inclusive, but serves the purpose of illustration):

- 1) Mitigate for impact on fish habitat related to current stream depletions from the North Poudre Supply Canal diversion
- 2) Mitigate for effects from the proposed Pleasant Valley Pipeline

- 3) Install fish screens on the North Poudre Supply Canal diversion dam and other diversion structures to prevent capture and transport of fish in early life stages
- 4) Modify timing and quantity of releases from the Hansen Supply Canal to better mimic the Poudre's natural hydrograph, and to prevent siltation and low summer flows in the Poudre
- 5) Secure needed deliveries to the Dixon Reservoir

These and other ideas should be pursued as part of the ongoing NEPA process and through negotiation with the many stakeholders prior to legislative action.

2. Ensuring Public Involvement

H.R. 4389 should not thwart the public process already underway by the Bureau.

The proposed legislation would put the cart before the horse by dictating an outcome and subverting the multi-faceted public involvement in the Bureau's NEPA process. Notably, the bill's mandatory language, that the Secretary "shall" transfer the four facilities to the District, prevents full environmental review by precluding a "no action" alternative of not transferring the facilities. This and other options must be kept open to avoid merely *pro forma* compliance with the requirements of NEPA.

The importance of allowing public involvement before legislation is paramount. Congressional action prior to full public involvement would disadvantage both Congress and the public. Premature legislation would deprive Congress of the benefit of full analysis of the issues by federal agencies and other stakeholders and could dissuade creative solutions that may result from that analysis. At the same time, premature congressional action mandating transfer would substantially alter the playing field for public participation in transfer negotiations.

The Bureau and the District have stated their commitment to public involvement. The 1999 Memorandum of Understanding between the Bureau and the District includes as an area of mutual responsibility conducting the transfer in "an open manner that ensures public participation," including public notice and hearings, and development and execution of "an agreement concerning future operation of the transferred facilities." *See Memorandum of Understanding Between Bureau of Reclamation and Northern Colorado Water Conservancy District, October 1999, at 4.*

In addition, the Bureau's 1995 Framework document for asset transfers states that local governments and the public shall have the opportunity to voice their views, suggest options for remedying any problems, and full access to relevant information related to the proposed transfer. *See Framework for the Transfer of Title: Bureau of Reclamation Projects, August 7, 1995 at 5.*

Most importantly, the Bureau's Framework document indicates that stakeholder negotiations related to the specifics of the transfer should precede any legislative action. It directs that "[o]nce Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer." *See Framework at 5.* This policy was elaborated last summer through a letter from Commissioner Martinez, where he noted the problems inherent in taking a "short cut" from the Framework process:

Some districts have followed Reclamation's process and there has been good progress. However, others have

decided to go straight to Congress without going through the open and public framework process. In the past few years, we have found that this "short cut" has not actually been quicker or more efficient than the Framework process. (*July 28, 1999, letter from Commissioner Eluid Martinez to Bruce Driver, Executive Director of the Land and Water Fund*)

Public involvement through the Framework process can address other issues of concern to the taxpayers who currently own the facilities proposed for transfer. These issues include, but are not limited to:

1. Determining the role of the facilities in protecting and restoring the Poudre River and its natural environment, including threatened and endangered species in the South Platte River. This may involve consultation with the U.S. Fish & Wildlife Service pursuant to section 7 of the ESA.
2. Assessing whether the facilities are too important in their impact on the Poudre and South Platte rivers to allow transfer to non-federal ownership.
3. Assuring meaningful compliance with all environmental laws prior and subsequent to transfer.
4. Determining the economic fairness of the transfer to the American taxpayer.
5. Assessing the impact of the transfer on urbanizing pressures in the area.
6. Evaluating the adequacy of the facilities' operation regime after transfer.

Resolving these and other issues is possible only through continuing the public NEPA process initiated by the Bureau and through later negotiations by stakeholders. The Bureau's EA, due sometime this summer, will allow essential public involvement on these and other issues and will enable the Bureau to determine its next step under NEPA.

In sum, passing legislation today that mandates transfer of the facilities to the District would short cut the public Framework process already begun and may foreclose many available options. It should be left to all stakeholders to determine whether a transfer should go forward and, if so, under what conditions.

3. Ensuring a Good Deal for the Taxpayer

Federal taxpayers are entitled to a fair price for facilities transferred to the District. In addition, the transfer must reflect the value of any land or other non-water assets transferred, as well as the present value of anticipated receipts to the federal Treasury. These concepts are embodied in the Bureau's Framework document, where one of the six major criteria is ensuring that "[t]he Federal Treasury, and thereby the taxpayer's financial interest, must be protected." *Framework at 3.*

H.R. 4389, however, offers no guide as to whether the proposed transfer to the District is a good deal for the taxpayer. It is important to note that the cost of the Colorado-Big Thompson Project exceeded its cost estimate (\$46 million in 1937) by over 500%. Current construction costs, plus interest, total over \$238 million. The District's repayment obligation, initially capped at \$25 million in 1937, was eventually increased to \$35.5 Million. Even at this higher repayment level, however, the District will pay only 14% of the total cost of C-BT.

These generous financial repayment terms may be embedded in the economics of irrigated agriculture and the policy choices of the last century. But these terms should not be construed to mean that the District has

actually "paid for" the facilities. Reclamation law does not provide for title transfer once repayment obligations are met, and for good reason--there is no relationship between meeting repayment obligations and any financial notion of paying for a project.

Because the proposed transfer would be a huge new benefit to the District, the negotiated transfer should include compensation to the taxpayer in the form of environmental enhancement, public accountability, and other measures.

Conclusion

Until these critical issues have been addressed, we urge the Subcommittee to not go forward with this bill. We pledge to work with the Bureau and the District through the ongoing NEPA process and through stakeholder negotiations to see if we can reach agreement and then bring the proposed transfer back before you. It is not appropriate at this time, however, for Congress to allow the District to take a "short cut" through the current proposal that would mandate transfer.

#